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T. W. BARNETT, JR.

v.

No. 21

John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

v.

No. 22

John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

v.

No. 23

John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

v.

No. 24

John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

v.

No. 25

John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

v.

No. 26

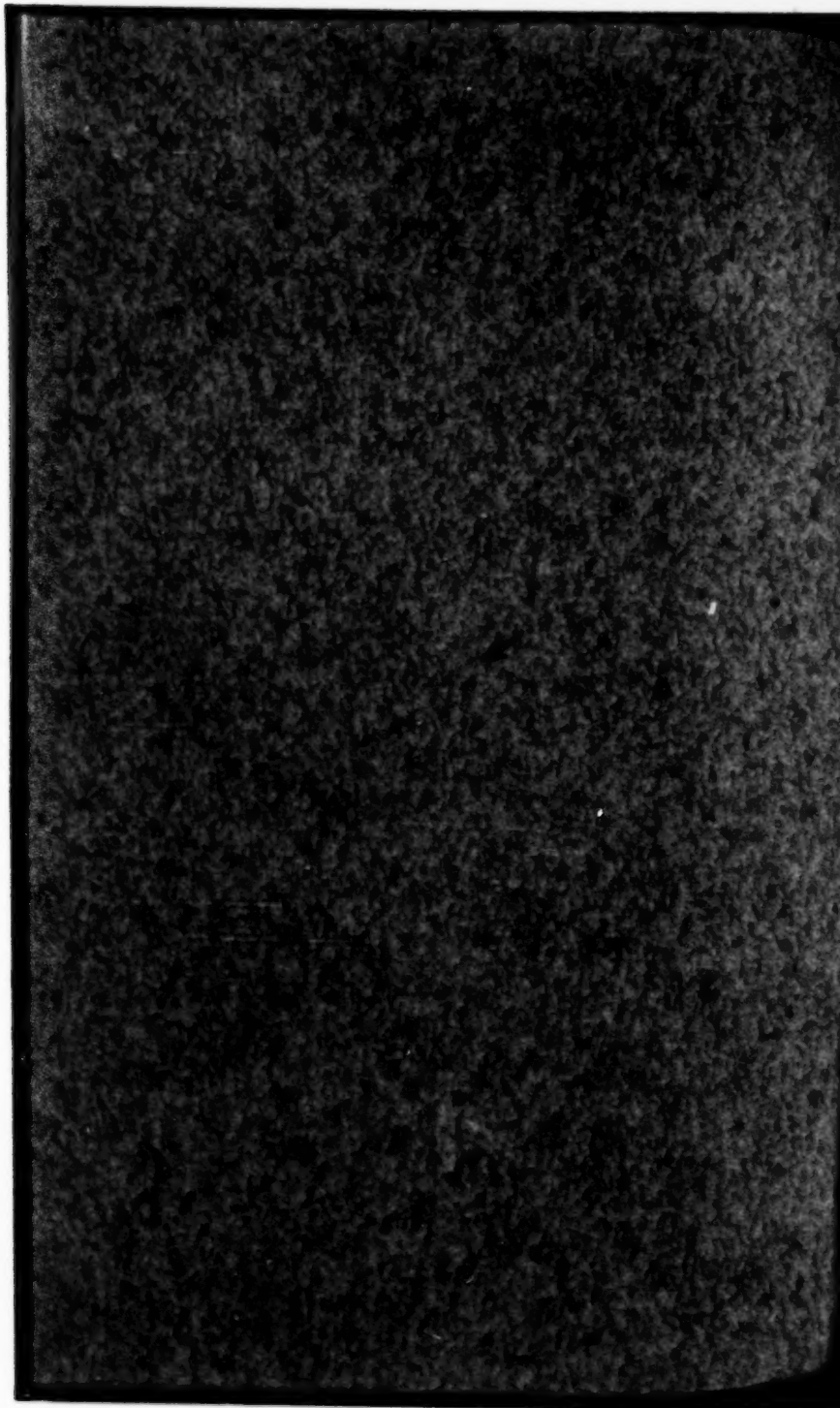
John D. Callahan, Treasurer of Porto Rico

vs. Various Banks Deposits, et al.

THE ABOVE CASES, BEING OF THE SAME NATURE, ARE HEREIN JOINED BY
ORDER OF THE COURT, AND THE COURT HAS ORDERED THAT THE
CASES BE HEARD TOGETHER.

JOHN D. CALLAHAN, Plaintiff,
vs. Various Banks Deposits, et al., Defendants.

JOHN D. CALLAHAN,
Treasurer of Porto Rico.



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In the Supreme Court of the United States

OCTOBER TERM, 1927.

T. H. SMALLWOOD, <i>et al</i> ,	<i>Petitioners,</i>	No. 211
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	
ADOLFO VALDES ORDONEZ, <i>et al</i> ,	<i>Petitioners,</i>	No. 212
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	
INSULAR MOTOR CORPORATION	<i>Petitioner,</i>	No. 213
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	
ADOLFO VALDES, <i>et al</i> ,	<i>Petitioners,</i>	No. 214
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	
FINLAY, WAYMOUTH & LEE, INC.,	<i>Petitioner,</i>	No. 215
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	
ANGEL ABARCA PORTILLA, <i>et al</i> ,	<i>Petitioners,</i>	No. 216
v. JUAN G. GALLARDO, Treasurer of Porto Rico,	<i>Respondent.</i>	

BRIEF OF RESPONDENT

"On the sole question whether they have become moot by virtue of the Act of March 4, 1927, amending Section 48 of the Organic Act of Porto Rico."

OPINIONS BELOW

The opinions of the United States District Court for Porto Rico in these several cases dismissing the various bills of complaint because of "adequate remedy at law," and also for want of equity, are not yet reported. They appear on pages 53, 71-73, 89, 90-105, and 106 of the printed transcript of the record filed here in cases Nos. 211, 212 and 213; and pages 44-59, 61-62, 80-81, 101, and 103-104 of the printed transcript of the record in cases Nos. 214, 215 and 216.

The opinions of the Circuit Court of Appeals, First Circuit, of September 25, 1926, on the original hearing, and of January 7, 1927, on rehearing, are reported in "*Porto Rico Tax Appeals*," 16 F. (2d) 545 et seq., and 16 F. (2d) 548 et seq., respectively. They also appear on pages 129-138 and 150-152 of the printed transcript of the record in cases Nos. 211, 212 and 213; and pages 116-124 and 136-138 in cases Nos. 214, 215 and 216.

JURISDICTION

This court at the October term, 1926, on May 16, 1927, by identical orders in these several cases (then designated as cases Nos. 1018, 1019, 1020, 1021, 1022, and 1023 on the 1926 calender of this court) ordered that

"The petition for writs of certiorari in these cases is granted and the cases are set for hearing on the first day of next term, Monday, October 3 next, after the cases heretofore assigned for that day, on the sole question whether they have become moot by virtue of the Act of March 4, 1927, amending Section 48 of the Organic Act of Porto Rico."

QUESTION PRESENTED

"the sole question whether they have become moot by virtue of the Act of March 4, 1927, amending Section 48 of the Organic Act of Porto Rico."

STATUTES INVOLVED

(1) *Act of March 4, 1927, amending Section 48 of the Organic Act of Porto Rico:*

"Sec. 7. That section 48 of the said Act be, and the same is hereby, amended to read as follows:

'Sec. 48. That the Supreme and District Courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the District Courts of the United States, and the District Courts may grant writs of mandamus in all proper cases.

'That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico.'" (*italics ours*)

Act of March 4, 1927, (44 Stat. Chap. 503, pp. 1418, 1421).

(2) *Revised Statutes, Section 3224:*

"No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."
(U. S. Rev. Stat., Sec. 3224.)

(3) *Organic Act of Porto Rico,—"Jones Law."*

"Sec. 9. That the statutory laws of the United States not legally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws." (39 Stat. Ch. 145, pp. 951, 954.)

"Sec. 40. That the judicial power shall be vested in the courts and tribunals of Porto Rico now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them with the various officials and attaches thereof, shall continue to be as now provided until otherwise provided by law: *Provided, however,* That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Porto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Porto Rico." (39 Stat. 965.)

"Sec. 41. That Porto Rico shall constitute a judicial district to be called 'the District of Porto Rico'. The President, by and with the advice and consent of the Senate, shall appoint one district judge, who shall serve for a term of four years and until his successor is appointed

and qualified, and whose salary shall be * * * . The district court for said district shall be called 'the District Court of the United States for Porto Rico', and shall have power to appoint all necessary officials and assistants, including the clerk, * * * . *Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign state or states, or citizens of a State, Territory or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds exclusive of the interest or costs the sum of \$3000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversies are citizens or subjects of the character aforesaid; Provided, That nothing in this Act shall be deemed to impair the jurisdiction of the District Court of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act. Upon the taking effect of this Act the salaries * * * ."* (39 Stat. 965-966.) (*Italics ours.*)

"Sec. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters, or proceedings as between the courts of the United States and the courts of several States shall govern in such matters and proceedings as between the District Court of the United States and the courts of Porto Rico. Regular terms of said United States District Court shall be held at * * * . All pleadings and proceedings in said court shall be conducted in the English language. The said district court shall be attached to and included in the First Circuit of the United States, with the right of appeal and review by said Circuit Court of Appeals in all cases where the same would lie from any district court to any Circuit Court of Appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would lie from such district courts." (39 Stat. 966.)

"Sec. 43. That writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico may be taken and prosecuted to the Circuit Court of Appeals for the First Circuit and to the Supreme Court of the United States as now provided by law." (39 Stat. 966.)

(4) *The Porto Rican statutes providing for recovery of taxes paid under protest.*

These "Tax Refund Acts" are in the Appendices hereto (*infra*, Appendices I and II, pp. 35-50).

STATEMENT

These cases are all suits in equity begun by the respective petitioners in the United States District Court for Porto Rico to enjoin this respondent, Treasurer of Porto Rico, from collecting taxes levied under Porto Rican statutes. In each case the District Court dismissed the bill of complaint, both because complainant had an adequate remedy at law (R. 89, 105, and 107, in cases Nos. 211, 212 and 213; R. 50-52, 59, 61, 63, 81, 101, 103, and 104, in cases Nos. 214, 215 and 216) by payment of the tax under protest and suit at law to recover the amount under the Porto Rican "Tax Refund Acts" (Acts of 1924 and 1925, *supra*; see Appendix II, *infra*, pp. 45-49), and also because on the merits the taxes were valid (R. 53, 71-73, 89-105, and 107, in cases Nos. 211, 212 and 213; R. 44-59, 61-62, 62-63, 80-81, 101, 103-104, and 105, in cases Nos. 214, 215 and 216).

Appeals were prosecuted to the Circuit Court of Appeals, First Circuit, by the various complainants (petitioners here), as well as by complainants in numerous other tax injunction cases in which the bills had likewise been dismissed by the District Court, and forty-three of the cases, including these six, were argued and decided together by the Circuit Court of Appeals under the title "Porto Rico Tax Appeals" (16 F. (2d) 545; rehearing, *ib.* 548). In its original opinion, September 25, 1926 (16 F. (2d) 545) that court (*ib.*, at p. 548),

"reached the conclusion that all these cases should be remanded to the District Court of Porto Rico with instructions to dismiss them for want of equitable jurisdiction, without prejudice to the right of the appellants to

bring actions at law in accordance with the provisions of the act" (of Porto Rico) "of June 23, 1924, and the amendments thereto."

But on rehearing that court decided the cases on the merits (16 F. (2d), *supra*, at pp. 548-549), upholding the validity of the taxes (except as to those levied on "importations from foreign countries sold by the importers in the original packages"), and saying as to the question of adequate remedy at law:

"The question of jurisdiction in equity turns entirely upon the construction to be given to the Porto Rican legislation of 1924, Act No. 9, and 1925, Act No. 84. This court does not now decide that under that legislation actions at law to recover taxes paid under protest may not be maintained in the Federal court. But whether, as against objection such jurisdiction can be sustained, is not entirely plain. The legislature of Porto Rico might well make it plain, as did the legislature of Massachusetts, by a simple statute quoted in *Long v. Norman* (C. C. A.) 289 F. 5, 8.* Apart from this doubt (*Dawson v. Kentucky Distilleries Co.*, 255 U. S. 288, 296), the remedy at law is inadequate. For the taxes in question must be paid monthly and the protesting tax payer must within thirty days after each payment bring his suit at law against the treasurer. This involves a multiplicity of suits by the same party to enforce the same right, * * * .

Jurisdiction in equity must be sustained." (*Porto Rico Tax Appeals*, *supra*, 16 F. (2d) 545, 549).

It will be observed that these suits were commenced and decided, both in the District Court and in the Circuit Court of Appeals, before March 4, 1927, the date of the Act of Congress amending Section 48 of the Organic Act of Porto Rico by providing "that no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico" (Act of March 4, 1927, *supra*, 44 Stat. 1421); but that the three months' time allowed by the Jurisdiction Act of February 13, 1925, within which to petition this court for writs of certiorari, had not yet expired when the Act of March 4, 1927, was approved (the opinion of the Circuit

* Since done.—Act No. 8, of April 19, 1927. Laws of Porto Rico, 1927, pp. 122-124 (Appendix I, pp. 35-37, *infra*).

Court of Appeals on rehearing having been entered on Jan. 7, 1927; 16 F. (2d) 545, 548, *supra*) and the final judgments of that court the same day (R. 154, in Cases Nos. 211, 212 and 213; R. 140, in Cases Nos. 214, 215 and 216). In other words, the amendatory act of March 4, 1927, was passed less than two months after the entry of the final decrees in the Circuit Court of Appeals; and more than a month (one month and three days) before the expiration of the time for petitioning this court for writs of certiorari.

Afterwards on April 4, 1927,—one month after the approval of the amendatory act of March 4, 1927,—these petitions for certiorari were filed in this court.

History of the controversy

Prior to the passage of the amendatory act of March 4, 1927, here in question, it had been the contention of the Porto Rican Government that the Federal District Court of Porto Rico could not,—or, in any event, ought not,—to take jurisdiction in equity on bills for injunction to restrain the Porto Rican Government from collecting its taxes; because (a) the taxpayers had an adequate remedy at law, under the Porto Rican "Tax Refund Acts" of 1924 and 1925 (*infra*, pp. 45-49, Appendix II hereto), by paying the taxes under protest and suing at law for their refund with 6% interest, either in the insular courts or in the Federal District Court; and (b) also because Section 3224, U. S. Revised Statutes, prohibiting suits from being maintained in any court, for the purpose of restraining the assessment or collection of any tax, is in force in Porto Rico, under the provisions of Section 9 of the "Jones Law", the Organic Act for that island; Rev. Stat., Sec. 3224, being one of the "statutory laws of the United States not legally inapplicable."

As to the question of "adequate remedy at law", the Insular Government's position was fully stated in its brief on rehearing in the Circuit Court of Appeals in these cases. Without here attempting to recite it, the portion of that brief relating to this question is reprinted in Appendix IV hereto (*infra*, pp. 63-85).

As to the applicability in Porto Rico of Section 3224, U. S. Revised Statutes, the position of the Insular Government was stated to the Committee on Insular Affairs of the House of

Representatives in a letter from the Secretary of War, quoted by the Chairman of the Committee on the hearing May 11, 1926 (Hearings, Com. on Insular Affairs, 69th Cong., H. R. 4085 and H. R. 11846, May 4, 5 and 11, 1926, p. 63; Appendix VI, *infra*, p. 95), as follows:

"In certain tax cases, now pending in the Circuit Court at Boston the Attorney General of Porto Rico has pleaded that Section 3224 of the Revised Statutes is now in effect in Porto Rico. Unless the proposed bill is passed at this session, this question will probably be decided before the next session of Congress."

The following September,—September 25, 1926,—the Circuit Court of Appeals in its opinion on the original hearing in these cases, said (16 F. (2d) 545, 548, *supra*) as to this question:

"(2) The interference of the courts of the United States by injunction with the collection of taxes by a State or with its administration of matters of internal police can only be justified in a plain case not otherwise remediable. *Arkansas Building & Loan Association v. Madden*, 175 U. S. 269, 273. See, also, *Long v. Norman, et al*, 289 Fed. 5, a case in this circuit.

"(3) It was the purpose of the Foraker Act (Comp. Stat. Sec. 3747, *et seq.*) and the Jones Act (Comp. Stat. Sec. 3803a, *et seq.*), which succeeded it, to confer sovereignty upon Porto Rico and an autonomy similar to that of the States. *Gromer v. Standard Dredging Co.*, 224 U. S. 362; *Porto Rico v. Rosaly*, 227 U. S. 270."

"The right to tax, for the purposes of government, one of the attributes of sovereignty, was conferred upon Porto Rico by Congress, and there is a stronger reason for applying the above rule to Porto Rico than to the States, in order that it may not be hampered and obstructed in raising revenue for the administration of its government. Congress has recognized the necessity of preventing the embarrassment of the United States in the collection of taxes assessed under the internal revenue laws by enacting Section 3224, Revised Statutes (Comp. Stat. Sec. 5947), providing that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.'"

"While we think this section is not applicable to Porto Rico, as pressed upon us in argument, yet, the principle involved is, and there are as strong reasons for its application to Porto Rico as to the United States." (*Italics ours.*)

In its opinion on re-hearing (16 F. (2d) 548-550, *supra*), that court, however, did not notice this question.

The argument on behalf of the Porto Rican government on this point is stated in the extract from the brief filed in the Circuit Court of Appeals in these cases by this respondent, appellee there, reprinted in Appendix VII hereto, *infra*, pp. 98-102.

Congress intervenes

That being the situation, and while those contentions between the Insular Government on the one hand, and the taxpayers on the other hand, as to the jurisdiction in equity of the Federal District Court of Porto Rico on bills for injunction to restrain the collection of insular taxes, were still pending and undetermined, not yet having reached this court, the Congress intervened with the amendment of March 4, 1927, to the Organic Act, saying, explicitly,

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico." (44 Stat. *supra*, 1421.)

The debate in the Senate, February 28, 1927, upon this clause of the Act (Vol. 68, Cong. Rec., pp. 5025-2026) is printed in Appendix V hereto (*infra*, pp. 86-89).

The statements of Governor Towner of Porto Rico, of Major General McIntyre, Chief of the Bureau of Insular Affairs, and of Hon. Felix Cordova Davila, Delegate in Congress from Porto Rico, himself a member of the Committee, on the hearings before the House Committee on Insular Affairs, May 4, 1926 (Hearings before H. R. Com. on Insular Affairs, 69th Cong., 1st Sess., on H. R. 4085 and H. R. 11486, May 4, 5 and 11, 1926, pp. 5, 6, 8-9, 10-11, 63-65) as to the purpose of this amendment, are in Appendix VI (*infra*, pp. 90-97).

RESPONDENT'S POSITION

It is the position of the Porto Rican Government that:

1. The Act of March 4, 1927, really makes no change whatever in the procedure or in the jurisdiction of the court. It is

merely an express declaration or direction by Congress that the rule of Section 3224, Revised Statutes, is applicable in Porto Rico;—which, respondent submits, was already the case under Section 9 of the Jones Law.

2. If the Act of March 4, 1927, be held to be really a change in the antecedent law, then it is a modification,—a diminution,—of the jurisdiction theretofore granted to the District Court of the United States for Porto Rico by Section 41 of the Organic Act, the "Jones Law"; and is to that extent an amendment of Section 41, with which it must be read. It is immaterial that it is, in form, an amendment of Section 48 of the same Act. Upon such diminution of,—or withdrawal of,—the jurisdiction of the court, all pending cases necessarily fall, there being no saving clause in the Act.

3. These cases are necessarily within the rule of Section 3224, Revised Statutes,—now explicitly declared by Congress by the Act of March 4, 1927, to bind the District Court for Porto Rico, because:

A. There are no unusual circumstances about these cases and no undue hardships upon the taxpayer involved in seeking relief in the Insular courts, or in paying the tax under protest and then suing for refund either in the Insular courts or in the Federal District Court for Porto Rico, and, therefore, there is nothing to take these cases out of the operation of these Acts; even if an implied exception could be here admitted, such as this court has admitted to the operation of Section 3224, Revised Statutes, as applied to the constitutional courts of the United States.

B. But such an implied exception is not here applicable, since the District Court of the United States for Porto Rico is not a constitutional court wielding "the judicial power of the United States"; but is merely one among the territorial courts for Porto Rico established by Congress. It is, like the other territorial courts, but the creature of Congress, exercising such powers and only such powers (whether judicial, legislative or administrative) as the Congress may have granted it.

4. Appellants have no vested right in any particular procedure. The jurisdiction of the courts may be changed at any

time pending the suit (or while the suit is pending on appeal or writ of error, or other method of review); and the final judgment must be determined by the law governing the jurisdiction of the court and the procedure at the time it is entered; not by the law as it stood when the suit was begun.

A. No vested right of appellants is affected. Their only "right",—as contradistinguished from procedure,—is to have a reasonable opportunity to test the validity of the taxes of which they complain. This right remains unaffected. They may either (1) pay the taxes under protest and sue for their refund with interest at 6%, either in the District Court of the United States for Porto Rico or in the Insular courts; or else they may (2) file a bill for injunction, or such other equitable remedy as they may claim, in the Insular courts of Porto Rico, which are also territorial courts of the United States established by Congress by the same Organic Act, "Jones Law", by which the so-called Federal District Court for Porto Rico was established, having judges likewise appointed by the President for life by and with the advice and consent of the Senate; and with the same right of appeal to the Circuit Court of Appeals for the First District,—and the same right to petition this court for ultimate review by certiorari,—as exists to review judgments and decrees of the Federal District Court for Porto Rico.

Congress might, without invading any "right" of appellants, have entirely abolished the District Court of the United States for Porto Rico, leaving, as in the Philippines, only the territorial courts known as the Insular courts.

5. In any event appellants in these cases have an adequate remedy at law, so that there is no jurisdiction at all in equity; and, therefore, the question of the power to grant an injunction does not really arise in these cases.

ARGUMENT.

POINT I

The Act of March 4, 1927, really makes no change whatever in the procedure or in the jurisdiction of the court. It is merely an express declaration or direction by Congress that the rule of Section 3224, Revised Statutes, is applicable in Porto Rico;—which, respondent submits, was already the case under Section 9 of the Jones Law.

A. THE UNITED STATES DISTRICT COURT FOR PORTO RICO, SITTING IN EQUITY, HAS NO JURISDICTION TO INTERFERE BY INJUNCTION TO RESTRAIN THE COLLECTION OF TAXES LEVIED UNDER AN ACT OF THE LEGISLATURE OF PORTO RICO BECAUSE OF THE PROHIBITION EXPRESSLY STATED IN SECTION 3224, REVISED STATUTES OF THE UNITED STATES.

B. *Even if it should be held that Section 3224, Revised Statutes, is not, as a binding statute of the United States, in effect in Porto Rico under Section 9 of the Organic Act ("Jones Law", 39 Stat. 954), in any event "the principle involved is, and there are as strong reasons for its application to Porto Rico as to the United States."*

Section 3224, Revised Statutes, provides:

"No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

Section 9 of the Organic Act of Porto Rico provides (39 Stat. 554):

"Sec. 9. That the statutory laws of the United States not legally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws."

Section 3224, Revised Statutes, on its face, is not an internal revenue law. It is a general limitation on the equity powers of United States courts. It is, in fact, properly to be considered as a part of the Judicial Code. That it is in its nature "not legally inapplicable" in Porto Rico is undoubted. As said by the Circuit Court of Appeals in its original opinion of September 25, 1926, in these cases (16 F. (2d) 545, *supra*, at p. 548):

"There is a stronger reason for applying the above rule to Porto Rico than to the States, in order that it may not be hampered and obstructed in raising revenue for the administration of its government."

Some of these reasons were cogently stated to the House Committee on Insular Affairs during its hearings on the bill which afterwards became the Act of March 4, 1927, here in question, by Governor Towner of Porto Rico, by Major General McIntyre, Chief of the Bureau of Insular Affairs, and by Judge Davila, Delegate in Congress from Porto Rico (Hearings, H. R. 4085 and H. R. 11846, House Com. on Insular Affairs, May 4, 5, 11, 1926, pp. 5, 6, 8-9, 10-11, 63-65; Appendix VI hereto, *infra*, pp. 90-97); and by Senator Bingham in the debate in the Senate, February 28, 1927 (Vol. 68, Cong. Rec., pp. 5025-5026; Appendix V hereto, *infra*, pp. 86-89).

Without here repeating it at length, respondent submits to this court and relies upon the same argument in support of this point which he presented to the Circuit Court of Appeals in these cases, and which is printed in Appendix VII hereto, *infra*, pp. 98-102, to which respondent asks leave to refer, with the same effect as though he had here reprinted it in full.

POINT II

Even if the Act of March 4, 1927, be held to be really a change in the antecedent law, then it is a modification,—a diminution,—of the jurisdiction theretofore granted to the District Court of the United States for Porto Rico by Section 41 of the Organic Act, the Jones Law; and is to that extent an amendment of Section 41, with which it must be read. *It is immaterial that it is in form an amendment of Section 48 of the same Act.*

Upon such diminution of,—or withdrawal of,—the jurisdiction of the court, all pending cases necessarily fall, there being no saving clause in the act.

"It is equally well settled that if a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law."

Railroad Co. v. Grant, 98 U. S. 398, 401 (WAITE, CH. J.), citing the following prior cases in this court:
United States v. Boisdore's Heirs, 8 How. 113;
McNulty v. Batty, 10 How. 72;
Norris v. Crocker, 13 How. 429;
Insurance Co. v. Ritchie, 5 Wall. 541;
Ex parte McArdle, 7 Wall. 514;
The Assessor v. Osbornes, 9 Wall. 567;
United States v. Tynen, 11 Wall. 88.

"Because of the act approved February 13, 1925 (43 Stat. 936), amending the Judicial Code, plaintiffs in error in their brief called attention to the question of jurisdiction of the District Court at the time judgment was rendered. Section 12 of that act (Comp. Stat. Supp. 1925, Section 991d), in so far as material here, reads thus:

'That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an act of Congress.'

The act went into effect on May 13, 1925. It has no saving clause of actions or suits pending at the time it became effective; and we think under the settled rule jurisdiction of the district court was ousted on May 13, it was without authority to proceed further, and the judgment it entered on May 15 was void."

Fed. Land Bank v. U. S. Nat'l Bank, 13 F. (2d) 36, 38 (C. C. A. 8th Circuit, May 25, 1926),

citing and relying upon:

The Assessor v. Osbornes, *supra*, 9 Wall. 567;
Railroad Co. v. Grant, *supra*, 98 U. S. 398;
Hallowell v. Commons, 239 U. S. 506;
Western Union Tel. Co. v. L. & N. R. R. Co., 258 U. S. 13.

"The case before us is a case of which, because of the fact that the appellants and appellees are citizens of the same State, we have no jurisdiction except under the act of 1833. And the act of 1866 declares that the act of 1833 shall not be construed so as to apply to such a case. This is equivalent to a repeal of an act giving jurisdiction of a pending suit. It is an express prohibition of the exercise of the jurisdiction conferred by the act of 1833 in cases arising under the internal revenue laws.

It is clear that when the jurisdiction of a cause depends upon a statute, the repeal of the statute takes away the jurisdiction. And it is equally clear, that where a jurisdic-

tion, conferred by statute, is prohibited by a subsequent statute, the prohibition is, so far, a repeal of the statute conferring the jurisdiction." (*italics ours.*)

Insurance Co. v. Ritchie, *supra*, 5 Wall. (72 U. S.), 541, 544.

"We are unable to discover how a law which amends the act whereby jurisdiction was conferred differs from a repealing act such as the acts considered in the decisions above referred to. Such an amendment is, in fact, a repeal. It repeals *pro tanto* the grant of jurisdiction. It revokes a portion of the jurisdiction which was conferred. There is nothing in the language of the act in question to indicate a purpose to except from its operation cases which were then pending. In the absence of such a reservation, the intention of Congress is clear. It is that the statute shall read as amended, and as if it had been so enacted in the first instance. As amended the statute expresses the measure of the court's power over pending cases.

* * * The amendment of June 27, 1898, does not, in terms, change the jurisdiction of the United States Circuit Court of Appeals. It relates only to the jurisdiction which had been conferred by the act of March 3, 1887, upon the district and the circuit courts, but its effects extend to all of the courts of the United States. This court has no power to review the judgment of the circuit court in a matter in which the latter has been divested of its jurisdiction. This court can act upon the circuit court only through its mandate. It will not issue its mandate to a court which has no power to enforce it."

United States v. Kelly, 97 Fed. 460, 462 (C. C. A. 9th Cir., Oct. 3, 1899; *italics ours.*)

"Jurisdiction in such cases was conferred by an act of Congress, and when that act of Congress was repealed the power to exercise such jurisdiction was withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell as the jurisdiction depended entirely upon the act of Congress."

The Assessor v. Osbornes, *supra*, 9 Wall. (76 U. S.) 567, 575.

"The effect of the passage of the repealing act was to take away the jurisdiction of the Court of Claims to pro-

ceed further in those cases which were founded upon the act thus repealed. This the Congress had power to do."

Re Hall, 167 U. S. 38, 42.

"The general rule was applied in those cases that if the law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law."

Gurnee v. Patrick County, 137 U. S. 141, 144 (FULLER, CH. J.).

"While the action was still pending and undetermined, by an act entitled 'An act to amend sections 1 and 2 of the act of March 3, 1887, c. 359' (Acts 1898, c. 503), it was enacted 'that section 2 of the act aforesaid * * * be and the same is hereby amended by adding thereto at the end thereof the following: "The jurisdiction hereby conferred upon said circuit and district courts shall not extend to cases to recover fees, salary or compensation for official services of officers of the United States or brought for such purposes by persons claiming as such officers or as assignees or legal representatives thereof."' If we read together the original act and the amendment, it becomes clear that the intent of Congress by the amendment of 1898 was to limit the jurisdiction which it had conferred upon the district and circuit courts by the act of 1887. Instead of having, as theretofore, concurrent jurisdiction with the court of claims as to all matters named in section 1 of the act of 1887, cases brought to recover fees, salaries, or compensation for official services of officers of the United States were to be excepted. To them the jurisdiction should no longer extend. *It is a withdrawal of authority for the courts to consider cases within the class to which it is provided the jurisdiction shall no longer extend, and as to them is a repeal of the act by which the jurisdiction was originally conferred. Insurance Co. v. Ritchie*, 5 Wall. 541; *Assessor v. Osbornes*, 9 Wall. 567. The law of 1898 contains no saving clause, and its effect, therefore, is to divest the court of authority over pending cases." (*italics ours*).

Fairchild v. United States, 91 Fed. 297, at pp. 297-298.

"The question arises, What is the effect of that statute upon the appeal in this case? The contention is made that it has no application to a case which was begun before the date of the statute. But we do not think so. There is in the statute no clause reserving jurisdiction as

to pending cases, and the meaning of the statute is clear that exclusive jurisdiction is given to the Secretary of the Interior of all cases where an Indian, * * *. That construction being given, *the statute deprived the circuit court of jurisdiction to entertain an action such as here under consideration, and thereby as a necessary incident, it took away the jurisdiction of this court to entertain an appeal from the decree of the circuit court, sued out after the statute went into effect, and this for the reason that the act deprives this court of the power to enforce any judgment it may render on an appeal.*" (*italics ours.*)

Parr v. Colfax, 197 Fed. 302, 304 (C. C. A. 9th Circuit, July 15, 1912),

cited with approval by this court in

Hallowell v. Commons, *supra*, 239 U. S. 506, 509 (HOLMES, J.)

See also to the same effect:

Hollingsworth v. Virginia, 3 Dall. 378, 382;

Bank of Hamilton v. Dudley, 2 Peters 492, 523-524 (MARSHALL, CH. J.);

South Carolina v. Gaillard, 101 U. S. 433, 437 (WAITE, CH. J.);

Hallowell v. Commons, *supra*, 239 U. S. 506, 508-509;

Western Union Tel. Co. v. L. & N. R. Co., 258 U. S. 13, 18-22 (McKENNA, J.);

1 Lewis' Sutherland Statutory Construction (2d Ed), Sec. 285, pp. 550-554;

6 R. C. L. Sec. 311, and cases cited;

15 Cor. Jur., "Courts," Sec. 140, p. 825, and cases cited in note 90;

Cooley's Constitutional Limitations (8th Ed.), Vol. II, pp. 787-790.

"The bringing of suit vests in a party no right to a particular decision; and his case must be determined on the law as it stands, not when the suit was brought, but when the judgment is rendered. * * *. And if a case is appealed, and pending the appeal the law is changed, the appellate court must dispose of the case under the law in force when its decision is rendered."

2 Cooley, Const. Lim., *supra* (8th Ed.), pp. 789-790.

"Powers derived wholly from a statute are extinguished by its repeal. * * * If a proceeding is in progress *in fieri* when the statute is repealed and the powers it confers cease, it fails, for it cannot be pursued. * * * If there has been a change or alteration or repeal of the law applicable to the rights of the parties, after the rendition of judgment, and pending an appeal, the case must be heard and decided in the appellate court, according to the existing law. * * * While a case was pending on writ of error the statute on which the jurisdiction of the lower court depended was repealed. The court inadvertently reversed the judgment and remanded the cause. On its attention being called to the statute it recalled the mandate, set aside the judgment of reversal and dismissed the writ of error." (United States v. Kelly, *supra*, 97 Fed. 460, 462.) "*Where a jurisdiction conferred by statute is prohibited by a subsequent statute, or the law conferring it is repealed, the jurisdiction ceases and causes pending at the time fail, and no costs are recoverable by either party unless saved by provisions of the repealing law. If pursued the proceedings will be void. * * *. Jurisdiction may be taken away by repeal of the statutes conferring it by necessary implication as well as by express words.*" (*italics ours*).

1 Lewis' Sutherland on Statutory Construction (2d Ed.) supra, Sec. 285, pp. 550-554, citing many authorities in the notes.

Those decisions of this court, and of circuit courts of appeal based upon this court's opinions, are on all fours with the situation here presented; and, it is submitted, are conclusive here.

The jurisdiction of the United States District Court for Porto Rico is derived wholly from a grant of power by Congress. Prior to the enactment of the amendatory act of March 4, 1927, that jurisdiction was derived wholly from Section 41 of the Jones Law, the Organic Act for Porto Rico (Ch. 145, 39 Stat., 951, 965). Its powers must be found within the four corners of that grant of jurisdiction. If it should be conceded for the moment, for the sake of argument, that notwithstanding Section 3224, Revised Statutes, that court prior to March 4, 1927, had power, under the general grant of jurisdiction given it by Section 41 of the Organic Act, to entertain a bill to enjoin the collection of Porto Rican taxes, then the amendatory act

of March 4, 1927, expressly prohibiting it from exercising that jurisdiction, was necessarily an amendment,—and to that extent a repeal,—of the prior statute, Section 41 of the Organic Act, establishing the jurisdiction of the court; and hence, there being no saving clause in the amendatory act of March 4, 1927, upon such repeal (*modification, amendment*) of the law, thus expressly withdrawing such jurisdiction, all pending cases "fell with the law," as repeatedly held by this court in the cases cited.

As was said by this court in *Railroad Co. v. Grant*, *supra*, answering the contention there made by counsel that it was not the intention of Congress to interfere with the jurisdiction in pending cases:

"Usually where a limited repeal only is intended, it is so expressly declared. Thus, in the act of 1875 (18 Stat. 316), raising the jurisdictional amount in cases brought here for review from the circuit courts, it was expressly provided that it should apply only to judgments thereafter rendered; and in the act of 1874 (*ib.* 27) regulating appeals to this court from the Supreme Courts of the Territories, the phrase is, 'that this act shall not apply to cases now pending in the Supreme Court of the United States where a record has already been filed.' *Indeed, so common is it, when a limited repeal only is intended, to insert some clause to that express effect in the repealing act, that if nothing of the kind is found, the presumption is always strong against continuing the old law in force for any purpose.*"

Railroad Co. v. Grant, *supra*, 98 U. S. 398, 402 (WAITE, CH. J.); recently quoted and followed in the Circuit Court of Appeals, 8th Circuit, in *Fed. Land Bank v. U. S. Nat'l Bank*, *supra*, 13 F. (2d) 36, 38.

The foregoing language of this court is particularly applicable here, in view of the fact that in Section 41 of the Organic Act conferring jurisdiction upon the District Court of the United States for Porto Rico in 1917, Congress had expressly inserted a proviso saving the jurisdiction over then pending cases, viz:

"*Provided*, That nothing in this act shall be deemed to impair the jurisdiction of the District Court of the United States for Porto Rico to hear and determine all con-

troversies pending in said court at the date of the approval of this act." (39 Stat. 965-966.)

Nevertheless, with that clause before them in Section 41 of the same act which they were amending, Congress in the amendatory act of March 4, 1927, saw fit not to include any *proviso* saving jurisdiction over pending cases. The necessary conclusion is that the Congress acted deliberately, intending instantly to cut off the jurisdiction of the court in such cases.

As said in our original brief herein in opposition to the petition for writs of certiorari in three of these cases (*Brief of Respondent in Opposition to Petition*, in cases Nos. 1018, 1019 and 1020, at the October Term, 1926,—now cases Nos. 211, 212 and 213,—p. 8), it was the manifest intention of this enactment that

"on March 4, 1927, Congress said to the United States District Court in Porto Rico: '*Stop with these tax injunctions, stop in your tracks!*'"

The reason is plain upon a perusal of the debate in the Senate and the statements before the House Insular Affairs Committee (Appendices V and VI, *infra*, pp. 86-89 and 90-97).

For example, see Senator Bingham's statement during the Senate debate:

"it has been possible and has proved an extremely dangerous thing in the government of Porto Rico for taxpayers to secure an injunction against paying Porto Rican taxes in the court of the United States, in the district court of the United States for Porto Rico, and thereby, instead of following our practice—which is to pay the tax first and then take an appeal—they do not pay the tax at all. They get injunctions against paying the tax; and I have seen in one of the publications the statement that at one time there was over \$2,000,000 of uncollected taxes held up by injunction. This amendment is to apply the same rule in Porto Rico that now applies on the continent of the United States."

"MR. WADSWORTH. May I ask the Senator from Connecticut, is this amendment perhaps the result of a decision or a series of decisions of the circuit court of appeals sitting at Boston?"

"MR. BINGHAM. No; it is caused by the fact that the district court of Porto Rico has repeatedly granted injunctions against the payment of taxes.

"MR. WADSWORTH. On the ground that they were illegally assessed?

"MR. BINGHAM. For one reason or another. The treasurer of Porto Rico has been unable to collect the taxes levied, as can be done in any other part of the United States. There the treasurer can collect, and then if there is any difficulty about it the matter is brought before a court; but under the present law, since the general statutes of the United States do not apply to Porto Rico, the taxpayer can get an injunction; and the taxes the collection of which was restrained by those injunctions amounted, at one time, to more than \$2,000,000.

"MR. WADSWORTH. Assuming that this amendment becomes law, what recourse has the taxpayer?

"MR. BINGHAM. The courts; the same that he has on the continent of the United States.

"MR. WADSWORTH. Which courts?

"MR. BINGHAM. The Porto Rican courts and the Federal court.

"MR. WADSWORTH. No; not the Federal court. That is the point. The Federal court is taken out of it.

"MR. BINGHAM. This is not a Federal tax. This is in regard to Porto Rican taxes.

"MR. SHORTRIDGE. Mr. President, if the Senator will yield, does the amendment deny to the courts their jurisdiction to grant an injunction as against illegal taxes?

"MR. BINGHAM. It will make the condition just the same as in the United States.

"MR. SHORTRIDGE. It, then, does give the court the jurisdiction to enjoin?

"MR. NORRIS. There is another provision, however. There is ample provision made, as I understand the law, for the return of taxes that are illegally paid.

"MR. BINGHAM. O, yes; there is no question about that.

"MR. NORRIS. But they can not get it by way of injunction.

"MR. SHORTRIDGE. In other words, they must pay under protest and then bring appropriate proceedings to recover?

"MR. BINGHAM. Yes; as in many of our States.

"The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Connecticut.

"The amendment was agreed to."

Senate Debate, Feb. 28, 1927, Vol. 68, Cong. Rec. pp. 5025-5026.

POINT III

These cases necessarily fall within the rule of Section 3224, Revised Statutes,—now explicitly declared by Congress by the Act of March 4, 1927, to bind the District Court for Porto Rico; because:

A. There are no unusual circumstances about these taxes and no undue hardships imposed upon the taxpayer in seeking relief in the Insular courts or in paying the tax under protest and then suing for refund either in the Insular courts or in the Federal District Court for Porto Rico; and, therefore, there is here nothing to take these cases out of the operation of these statutes (Rev. Stat. 3224, and Act of March 4, 1927), even if an implied exception could be here admitted in any event, such as this court has admitted to the operation of Section 3224, Revised Statutes, as applied to the constitutional courts of the United States.

B. But such an implied exception is not here applicable in any event; since the District Court of the United States for Porto Rico is not a constitutional court wielding "the Judicial Power of the United States," but is merely one among the territorial courts for Porto Rico established by Congress. Like the other territorial courts, it is but the creature of Congress exercising such powers, and such powers only (whether judicial, legislative or administrative) as the Congress may have granted to it.

Petitioners' argument (*Brief for Petitioners in cases Nos. 211, 212 and 213, "Point II"*, pp. 12-18; *Brief for Petitioners in cases Nos. 214, 215 and 216, "Point IV"*, pp. 13-18) that

"these cases come within the doctrine of *Hill v. Wallace*, 259 U. S. 44, and hence the act of March 4, 1927, does not prevent their maintenance even if that statute be

construed as applicable to suits brought prior to its enactment" ("Point IV", *Petitioners Brief, Cases Nos. 214-216*);

since

"in continental United States a Federal district court could enjoin collection of the taxes if the circumstances are 'extraordinary and entirely exceptional.'" (*Petitioners Brief, Cases Nos. 211-213, p. 12*),

is not here in point; because no such "extraordinary and entirely exceptional" burdens are imposed on the Porto Rican taxpayers in contesting the validity of these taxes on the merits, either (1) in the Insular courts in any form of procedure which they may see fit whether at law or in chancery, or (2) by payment of the taxes under protest and suit for refund either in the Insular courts or in the United States District Court for Porto Rico.

Without here repeating it at length, respondent relies upon the answer to this argument of the taxpayers, made by him as appellee in these cases in the Circuit Court of Appeals, which is reprinted in Appendix IV hereto (*infra*, pp. 84-85), to which respondent begs leave to refer. In connection therewith the regulations of the Porto Rican Treasury Department concerning the collection of these taxes,—of which, since they are recognized as part of the public law of the Island by the last clause of Section 94 of the Act of 1925 (*Porto Rican Laws of 1925, p. 648*), it is believed this court, as well as the Circuit Court of Appeals, may take judicial notice,—are printed in Appendix VIII, *infra*, pp. 103-105. The court's attention is particularly invited to the fact that the taxpayer is required to make his statement only *once a month*, at the end of the month, stating the articles sold during that month and the selling price; the tax is then computed by the Internal Revenue Division of the Insular Treasury Department, *and the tax thus computed is paid in one single payment*. The difficulties in paying under protest, supposed by counsel for petitioners (*Petitioners Brief, Cases Nos. 214-216, p. 16; Petitioners Brief, Cases Nos. 211-213, pp. 15-16*) are imaginary.

It may be added:

(a) Since the determination of these cases by the Circuit Court of Appeals, the Legislature of Porto Rico has adopted the suggestion made by that court in its opinion on the rehearing (16 F. (2d) *supra*, at p. 549) that:

"The Legislature of Porto Rico might well make it plain, as did the Legislature of Massachusetts by a simple statute quoted in *Long v. Norman* (C. C. A.) 289, Fed. 5, 8,"

by the enactment of Act No. 8 of April 19, 1927 (Appendix I *infra*, pp. 35-37), concerning the refund of taxes paid under protest, Section 3 whereof expressly provides (Laws of Porto Rico for 1927, p. 124; Appendix I *infra*, p. 36):

"A taxpayer who shall have paid under protest the whole or part of any tax may, within the term of one year from the date of payment, sue the Treasurer of Porto Rico in an Insular court of competent jurisdiction, or in the District Court of the United States for Porto Rico, to secure the return of the amount protested." (*italics ours*)

(b) Case No. 360 at the present term of this court, *Goodyear Tire & Rubber Co., Petitioner, v. Juan G. Gallardo, Treasurer of Porto Rico, Respondent*, in which the petitioner corporation is represented by the same counsel appearing for the petitioners in some of these cases, illustrates the practicability of the taxpayer paying these taxes and suing at law, in the Federal District Court of Porto Rico, for their return.

POINT IV

Appellants have no vested rights in any particular form of procedure. THE JURISDICTION OF THE COURTS MAY BE CHANGED AT ANY TIME PENDING THE SUIT (OR WHILE PENDING ON APPEAL OR WRIT OF ERROR OR OTHER METHOD OF REVIEW), AND ANY RIGHT TO FINAL JUDGMENT MUST BE DETERMINED BY THE LAW GOVERNING THE JURISDICTION OF THE COURT AND THE PROCEDURE AT THE PRESENT TIME; NOT BY THE LAW AS IT STOOD WHEN THE SUIT WAS BEGUN.

A. No vested right of appellants is affected.

Their only "right",—as contradistinguished from procedure,—is to have a reasonable opportunity to test the validity of the taxes of which they complain. This right remains unaffected. They may either (1) pay the taxes under protest and sue for their refund with interest at 6% either in the District Court of the United States for Porto Rico or in the Insular courts; or else they may (2) file a bill for injunction or such other equitable remedy as they may claim in the Insular courts of Porto Rico which are also territorial courts of the United States established by Congress by the same Organic Act, "Jones Law", by which the so-called Federal District Court for Porto Rico was established, having judges likewise appointed by the President for life by and with the advice and consent of the Senate and with the same right of appeal to the Circuit Court of Appeals for the First District,—and the same right to petition this court for ultimate review by certiorari,—as exists to review judgments and decrees of the Federal District Court for Porto Rico.

Congress might, without invading any "right" of appellants, have entirely abolished the District Court of the United States for Porto Rico, leaving, as in the Philippines, only the territorial courts known as the Insular courts.

The distinction between statutes changing the remedy, and those affecting vested rights, is well settled and is broad and plain.

A statute changing the remedy takes effect (in the absence of a saving clause) immediately. It operates on pending suits; and the procedure thereafter must be in accordance with the new law. But a statute affecting vested rights cannot operate retrospectively so as to change substantive rights already vested; and even in England, where the Parliament is not bound by any constitutional limitations, it will not be construed as intended to affect rights already vested, unless such a construction is required by the express words of the statute.

As to procedural changes, this court has said:

"It is well settled that, if a statute giving a special remedy is repealed without a saving clause in favor of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after."

South Carolina v. Gaillard, supra, 101 U. S. 433, 438.

This is the general rule recognized in the United States. For example, the Supreme Court of Illinois has said:

"When the law only affects the remedy or procedure, the rule in this State is that all rights of action will be enforceable under the new procedure, without regard to whether they accrued before or after such change in the law, and without regard to whether the suit had been instituted or not, unless there is a saving clause as to existing litigation. *Chicago & Western Indiana R. R. Co. v. Guthrie*, 192 Ill. 579, 61 N. E. 658, and authorities there cited. The Legislature, however, cannot pass a retrospective or an *ex post facto* law impairing the obligation of a contract, nor can it deprive a citizen of any vested right by a later legislative act. *Dobbins v. First National Bank*, 112 Ill. 553."

People v. Clark, 283 Ill., 221; 119 N.E. 329, 330 (*Carter, Ch. J.*),

quoting with approval

Cooley's Constitutional Limitations (7th Ed.) 543, (8th Ed., *supra*, pp. 789-790),

that:

"The bringing of suit vests in a party no right to a particular decision, and his case must be determined on the law as it stands, and not when the suit was brought but when the judgment is rendered."

Such a change in the procedure is in no proper sense a retrospective act.

As this court said in *Railroad Co. v. Grant, supra*:

"It does not vacate or annul what has been done under the old law. It destroys no vested rights. * * * But a party to a suit has no vested right to an appeal or writ of error from one court to another. Such a privilege once

granted may be taken away, and if taken away, pending proceedings in the appellate court stop just where the rescinding act finds them, unless special provision is made to the contrary."

Railroad Co. v. Grant, *supra*, 98 U.S. 398, 401-402.

NEITHER HAS A PARTY ANY VESTED RIGHT IN ANY PARTICULAR FORM OF PROCEDURE; e.g., as here urged, in a proceeding in chancery by injunction. Taking away that form of remedy, by limitation of the jurisdiction of the court, in no way impairs any vested right of the taxpayer.

"RETROSPECTIVE LAW"—Definition.

As pointed out by petitioners themselves (*Petitioners' Brief*, Cases Nos. 211-213, pp. 9-10), a "retrospective law," properly speaking is one which

"takes away, or impairs, *rights vested*, agreeably to existing laws."

Calder v. Bull, 3 Dall. 386, 391.

"It is one which changes, or injuriously affects, a *present right*; by going behind it, and giving efficacy to anterior circumstances to defeat it, which they had not when the right accrued."

*Poole v. Fleege*r, 11 Peters 185, 198.

"Upon principle, every statute which takes away or impairs *vested rights* acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

Society, etc., v. Wheeler, 2 Gall. 105, 139; 22 Fed. Cas. No. 13,156, pp. 756, 767 (STORY, J.).

Thus, upon the definitions quoted by counsel for petitioners themselves, it is apparent that the Act of March 4, 1927, here in question, is not a retrospective law; since it in no wise affects any vested rights of these petitioners or anyone else, but merely changes the form of the remedy; and that, therefore, this respondent was correct in stating in his original brief in opposition to the petition for certiorari in these cases (Brief for Respondent

in Opposition, in Cases Nos. 1018-1020, October Term, 1926—now Nos. 211-213,—p. 8):

"We have never believed or asserted that the Act of March 4, 1927, is retroactive. Indeed, we do not see how that act does or could have any retroactive effect. There is no question involved here of vacating any proceeding had prior to March 4, 1927. Our position is that on March 4, 1927, Congress said to the United States District Court for Porto Rico: '*Stop with these tax injunctions, stop in your tracks!*' Far from contending that the law is retroactive we insist that it had a very present effect upon all such suits pending on March 4, 1927, or thereafter to be commenced. The power of that court to enforce this particular remedy (injunction) in this class of cases was definitely taken away on March 4, 1927, and there being no saving clause that pending suits might be prosecuted to a definitive conclusion under the former power of the court and on appeal, they must necessarily abate."

There is no ground for the criticism of this statement made on page 9 of the brief for petitioners in Cases Nos. 214-216.

As this court said in *Hallowell v. Commons*, *supra*, of the act there in question transferring from the courts to the Secretary of the Interior jurisdiction to ascertain the legal heirs of a deceased Indian, so also the act here in question

"takes away no substantive right, but simply changes the tribunal that is to hear the case. In doing so it evinces a change of policy. • • •

"The consideration applies with the same force to all cases and was embodied in a statute that no doubt was intended to apply to all, so far as construction is concerned.

"There is equally little doubt as to the power of Congress to pass the act so construed. *We presume that no one would question it if the suit had not been begun. It is a strong proposition that bringing this bill intensified, strengthened or enlarged the plaintiff's rights.* • • • The difficulty in applying such a proposition to the control of Congress over the jurisdiction of courts of its own creation is especially obvious." (*Italics ours*.)

Hallowell v. Commons, *supra*, 239 U.S. 506, 509.

This distinction between precedural changes on the one hand, and statutes attempting to affect retrospectively prior vested

rights on the other hand, is also fully recognized by this court in the case cited and relied upon by counsel for the petitioners (*Petitioners' Brief, Cases Nos. 211-213, p. 7; Petitioners' Brief, Cases Nos. 214-216, pp. 8, 10*), of *United States Fidelity Co. v. Struthers Wells Co.*, 209 U.S., 306, 316-317; where, however, this court held (pp. 316-317) that the statute there in question could not be construed as a procedural change merely, as was there contended by the plaintiff in error, because to do so would have affected prior vested substantive rights, saying (p. 315):

"It is admitted by the plaintiff in error that the act is not confined to procedure, but deals with substantive rights in some instances."

That case is not in point here, except as it is illustrative of this court's recognition of the difference between changes in procedure, and attempts to affect vested substantive rights retrospectively.

Its citation by petitioners also illustrates, however, the fallacy of their entire argument here; which wholly loses sight of the distinction between procedural changes,—changes in the form of the remedy or in the jurisdiction of the courts,—on the one hand; and attempts retrospectively to affect substantive vested rights, on the other.

An examination of the cases cited by them,—both by petitioners in Cases Nos. 211-213, and also by petitioners in Cases Nos. 214-216,—shows that all of the cases upon which they rely under this head are cases of statutes affecting vested rights.

They are not in point here.

The same is true of the cases cited by the Circuit Court of Appeals for the First Circuit, in support of its opinion, upon which these petitioners now rely, April 11, 1927, holding that this act of March 4, 1927, does not apply to pending suits (*Galardo v. Porto Rico Railway Light & Power Co.*, 18 F. (2d) 918, 925, cited in *Petitioners' Brief, Cases Nos. 211-213, pp. 4, 5; and in Petitioners' Brief, Cases Nos. 214-216, pp. 3, 4*).*

*On the merits, the *Porto Rico Railway Light and Power Co.* case was decided in favor of this respondent the Insular Treasurer, completely upholding the validity of the Porto Rican hydro-electric statute there in question (18 F. (2d) 918, 922-925.)

For example, the leading case there relied upon by the Circuit Court of Appeals, and likewise now cited and relied upon by opposing counsel here (*Petitioners' Brief, Cases Nos. 211-213, p. 7; Petitioners' Brief, Cases Nos. 214-216, p. 8*) of *Fullerton Co. v. Northern Pac. Ry. Co.*, 266 U.S. 435, 437, deals solely with "vested rights," and holds simply that Congress did not intend

"to revive actions against carriers when the period designated by the state statute for bringing them had expired during Federal control";

this court saying

"The Supreme Court of Minnesota held, rightly, we think, that the Transportation Act was not intended to revive or restore rights of action barred before it became effective."

Fullerton v. North. Pac. Ry. Co., supra, 266 U.S. 435, 437.

So also, the other recent case relied upon and quoted by petitioners (*Petitioners' Brief, Cases Nos. 211-213, pp. 6, 7, 8; Petitioners' Brief, Cases Nos. 214-216, pp. 6, 8*) of *United States v. St. Louis, etc., Ry. Co.*, 270 U.S. 1, is another "vested rights" case, holding merely that a statute of limitations (the Transportation Act of 1920, amending Par. 3, Sec. 16 of the Interstate Commerce Act) could not be applied retrospectively so as absolutely to bar a right of action existing at the time of its enactment, but which would have been barred by a literal application of the language of the act, because the right of action had arisen more than three years before.

Many cases are found in the books saving such vested rights of action, no matter how positive the terms of the new statute of limitations may be. They are in no way in point here.

No more are the English cases, upon which petitioners also rely, e.g., *Moon v. Durdan*, 2 Exch. 22 (1848) (*Petitioners' Brief, Cases Nos. 211-213, p. 5; Petitioners' Brief, Cases Nos. 214-216, p. 5*), and the other cases in that line. As pointed out in our original brief in opposition to the petition for certiorari in Cases Nos. 211-213 (1018-1020 at the October Term, 1926, pp. 9-10), those cases are also "vested rights" cases; and are in no way in point here.

The words of Mr. Justice McKenna, delivering the opinion of this court in *Western Union Tel. Co. v. L. & N. Ry. Co.*, *supra*, seem applicable:

"We have considered the cases and their incidents. It is not necessary to review them. There is a marked distinction between them and the case at bar. They all concerned the litigation of private rights and relations, and legislation which attempted to change those rights and relations by changing the conditions upon which they depended. The legislation in the case at bar has different purpose. It is directed to that which is conceived to concern the public interest; an exertion of power in the public interest of which the companies are the instruments or agents. It is not, therefore, within the principle of the cases cited against it. And, as we have seen, no rights had so far vested in the Telegraph Company as to preclude a change of policy or legislation which affected it."

Western Union Tel. Co. v. L. & N. Ry. Co., *supra*, 258 U.S. 13, 20.

No more had rights vested in these taxpayers, by the mere fact of the pendency of these suits.

HAD CONGRESS, BY THE ACT OF MARCH 4, 1927, ENTIRELY ABOLISHED THE UNITED STATES DISTRICT COURT FOR PORTO RICO, WITHOUT ANY SAVING CLAUSE AS TO PENDING CASES, LEAVING, AS IN THE PHILIPPINE ISLANDS, ONLY THE INSULAR COURTS, IT WOULD HARDLY BE CONTENDED THAT PENDING CASES DID NOT FALL WITH THE LAW.

No claim of any "vested rights," because suits had been begun and were pending, would be seriously pressed to sustain them. *Yet the principle is exactly the same.* It is wholly immaterial that the amendatory act here took away merely a part of the jurisdiction of the District Court; instead of all of it. As to that part which is taken away, the jurisdiction is as wholly gone as though the entire court had been abolished. Pending cases dependent upon that portion of the jurisdiction of the court which has been taken away, fall just as completely as though the entire court had been abolished.

POINT V

In any event appellants in these cases have an adequate remedy at law; and therefore under Section 267 of the Judicial Code there is no jurisdiction in equity.

In support of this point respondent submits to the court here, and relies upon, the same argument which he presented as appellee in the Circuit Court of Appeals. It is printed in Appendix IV hereto (*infra*, pp. 63-85), to which respondent asks permission to refer, without here repeating it at length.

It may be added, however, that, as hereinbefore pointed out (*ante*, pp. 6, 24), since the decision of these cases by the Circuit Court of Appeals, the Legislature of Porto Rico has re-enacted the "Tax Refund Acts" of that Island, in accordance with the suggestion made by the Circuit Court of Appeals (16 F. (2d) at p. 549, *supra*), so as expressly to provide for the right of a tax payer, having the requisite qualifications of citizenship, to bring such a suit in the United States District Court for Porto Rico (Act No. 8 of April 19, 1927, *Laws of Porto Rico for 1927*, pages 122-126; Appendix I, *infra*, pp. 35-37).

POINT VI

Appellants in these cases can suffer no danger or difficulty in paying the taxes under protest and suing for their refund under the Tax Refund Acts of Porto Rico.

The difficulties apprehended by petitioners (*Petitioners' Brief, Cases 211-216*, pp. 11-12; *Petitioners' Brief, Cases 214-216*, pp. 21-22) are imaginary.

It surely is not necessary for respondent to say to this court that the Insular authorities do not desire to trick petitioners out of their money, and would not be in position to do so, even if they wished. We submit that there is no possible way in which the order of the District Court, directing petitioners to deposit the moneys with the Clerk of that court, could be twisted into a payment to the Insular Treasury so as to start the statute of limitations run-

ning from that date. It is not so on its face; and therefore is not so at law. It was not so intended; and therefore could not be so treated in equity. And this court will not presume that either the Insular courts or the Federal District Court, upon a suit for refund of the taxes, would take a position so wholly at variance with right and justice and with the intentions of the parties, and so wholly unjust to the tax payers.

As to this point also we desire to refer, without here repeating it at length, to what this respondent said in his brief as appellee in the Circuit Court of Appeals in these cases. It appears in Appendix IV hereto, *infra*, pp. 84-85.

CONCLUSION

It is respectfully submitted that the United States District Court for Porto Rico was and is without jurisdiction of these suits, because (1) there is no jurisdiction in equity because of the adequate remedy at law; (2) under section 3224, Revised Statutes of the United States, in force in Porto Rico, there is no jurisdiction to enjoin the collection of Porto Rican taxes; and (3), in any event, if any such jurisdiction ever existed, it was withdrawn by the amendatory act of March 4, 1927, which, being an act affecting the jurisdiction of the court, applies to cases then pending.

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